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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,840	09/28/2001	Erich K. Erdle	225/50450	3733

23911 7590 09/29/2003

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EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 09/29/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application N .

09/964,840

Applicant(s)

ERDL E ET AL.

Examiner

Stephen J. Kalafut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 8/4/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-13 and 16 is/are allowed.
- 6) ☒ Claim(s) 1-10, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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Claims 1-10 and 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 as amended and 15 recite that the electrolyzer is “configured to receive electricity generated by an electric generator”. This term implies that the electrolyzer itself has a certain structure or configuration, which would enable it to receive electricity from a certain device, while it would not be able to receive electricity from that device if it is configured in another way. However, the present disclosure does not show how the electrolyzer is “configured” in any way, or any structural details which show how it may receive electricity from the generator in one configuration, but not in another. Claims 2-10 depend from claim 1 and would likewise be indefinite. Claim 14 recites an “electrolyzer means”, but the disclosure does not describe any “means”, other than an electrolyzer itself, which would meet this term.

Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The term “electrolyzer means” does not appear in the original disclosure, and would thus constitute new matter. While there is an “electrolyzer”, the term “electrolyzer means” is broader and is thus not supported over its entire scope.

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Claims 1, 4, 5, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Araoka *et al.*, for reasons of record, to the extent that they are understood.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Araoka *et al.*, for reasons of record, to the extent that they are understood.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Araoka *et al.* in view of Strasser *et al.*, for reasons of record, to the extent that the claim is understood.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Araoka *et al.* in view of Kitagani, for reasons of record, to the extent that the claim is understood.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Araoka *et al.* in view of Buswell *et al.*, for reasons of record, to the extent that the claim is understood.

Claims 11-13 and 16 are allowed. These claims recite that the electrolyzer is coupled to the generator, and therefore distinguish over Araoka *et al.*

Claims 14 and 15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action. These claims require the presence of the generator and the electrolyzer, and recite or imply some kind of

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cooperation therebetween. In addition, claim 14 must be amended to overcome the rejection under the first paragraph of §112. This may be done by deleting the word “means”.

Applicant's arguments filed 8/4/03 have been fully considered but they are not persuasive.

Applicants argue that claim 1 as amended contains language which clearly qualifies the nature of the electrolyzer, which cannot be ignored. This is not persuasive for reasons stated above, that the present disclosure does not show any configurations for the electrolyzer, and thus does not clearly qualify it. The reason that the art rejection was (and still is) made is not the structure of the electrolyzer itself, but that the claims do not require the presence of the generator and the combustion engine and their connection to the electrolyzer. These components are part of the “auxiliary power unit of a vehicle”, which is not actually required by claims 1-10 to be present. The claims are drawn to a power supply for this APU, but not the APU itself. *Araoka et al.* do not disclose the generator and the combustion engine, but because claims 1-10 do not require these to be present, *Araoka et al.* do not have to disclose them in order to be applicable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 703-308-0433. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 703-308-2383. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

sjk

*[Handwritten signature]*  
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